

## FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

## DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. Current regulations specify an 18-year-old child is eligible for California Work and Responsibility for Kids (CalWORKs) if he/she is enrolled as a full-time student in high school, or in a vocational or technical training program which cannot result in a college degree, provided he/she can reasonably be expected to complete either program before reaching age 19.
2. On July 7, 2004, the Superior Court in and for the County of Sacramento in the case of Fry v. Saenz, Case Number 00CS01350, issued a Judgment and Peremptory Writ of Mandate ordering the California Department of Social Services (CDSS) to promulgate regulations within 270 days of the date of service of the Judgment and Peremptory Writ of Mandate to adopt and implement the provisions of the Peremptory Writ of Mandate. These provisions require CalWORKs to provide cash aid to otherwise eligible 18-year-olds who are attending school full-time and are not expected to graduate before age 19 due to a disability.
3. In order to expedite the process to comply with the court's Peremptory Writ of Mandate, the regulations must be processed through an emergency regulatory filing and identified as such. The initial adoption of the emergency regulations shall be deemed to be an emergency and necessary for immediate preservation of public peace, health and safety, or general welfare.
4. Failure to implement these regulations on an emergency basis will result in noncompliance with the Court's order and the Administrative Procedures Act. Under Government Code Section 11340.5, no state agency shall use or enforce any order or rule of general application unless the rule or order has been adopted as a regulation and filed with the Secretary of State. If an emergency filing is not completed, the CDSS could be forced to deny cash aid to applicants and recipients in violation of the court order. This is contrary to the health and safety of the applicants and recipients of the CalWORKs program and the general welfare of California residents.
5. The Department has acted diligently and efficiently to prepare the attached emergency regulations and could not have completed these regulations in the allotted time without using the emergency process. The non-emergency rulemaking process set forth in the Administrative Procedure Act is sufficiently lengthy that it is not possible to implement these regulation changes on an immediate basis.

## INFORMATIVE DIGEST

These regulations comply with the Judgment and Peremptory Writ of Mandate issued on July 7, 2004, in the Fry v. Saenz lawsuit. CDSS issued All County Letters (ACL 04-33 and ACL 04-50) to provide County Welfare Departments (CWDs) with instructions for identifying otherwise eligible 18-year-olds for whom aid is to be provided under the provisions of the Fry v. Saenz writ.

Welfare and Institutions Code Section 11253 and the Manual of Policies and Procedures (MPP) Division 42, Chapter 42-101, Section 42-101.2 prohibit the granting of CalWORKs cash aid to a child who has reached age 18, unless the child can reasonably be expected to graduate before age 19. The lawsuit claimed that this provision violates the American with Disabilities Act because it discriminates against recipients who would not graduate before age 19 due to a disability. CDSS is proposing the adoption of these regulations to comply with the court order.

In proposed language, the regulations specify that, otherwise eligible 18-year-olds who attend school full-time and are considered to have a disability under the criteria specified shall continue to be eligible for CalWORKs benefits until they graduate, turn 19, or stop attending school full-time, whichever occurs first.

## COST ESTIMATE

1. Costs or Savings to State Agencies: \$1.5 million. The amount listed in this section is included in the 2004 Budget Act and is assumed to be funded from available TANF.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: \$0.4 million. The amount listed in this section is included in the 2004 Budget Act.
4. Federal Funding to State Agencies: \$13.7 million. The amount listed in this section is included in the 2004 Budget Act and is assumed to be funded from available TANF.

## LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies or school districts. There are “state-mandated local costs” in these regulations which do not require state reimbursement under Section 17500 et seq., of the Government Code because any costs associated with the implementation of these regulations are costs mandated by Fry v. Saenz, (Sacramento County Superior Court), Case Number 00CS01350, Judgment and Peremptory Writ of Mandate, July 7, 2004.

## AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific Fry v. Saenz, (Sacramento County Superior Court), Case No. 00CS01350, Judgment and Peremptory Writ of Mandate, July 7, 2004.